

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2161 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RUSTAMJI MINOCHAR SORABKHAN

Versus

STATE OF GUJARAT

Appearance:

MR MS RAO for Petitioners

SERVED BY DS for Respondent No. 1

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 03/05/96

ORAL JUDGEMENT

Leave to amend by correcting the clerical error in paragraph 11 (b) and (c) is granted.

2. Rule. Service of Rule is waived by learned Assistant Government Pleader Shri T.H.Sompura for the respondent. By consent of the learned Lawyers appearing for the parties, this petition is taken up for its

hearing and disposal today itself.

3. The order passed by and on behalf of the State Government (the respondent herein) on 11th January 1996 is under challenge in this petition under Article 226 of the Constitution of India. By its impugned order, the respondent cancelled the exemption granted by the order passed on 16th January 1992 with respect to certain parcels of land in all admeasuring 37,547 square metres within the urban agglomeration of Surat (the disputed lands for convenience).

4. The facts giving rise to this petition move in a narrow compass. It appears that the petitioners applied for grant of exemption under section 20 (1) of the Urban Land (Ceiling & Regulation) Act, 1976 (the Act for brief) qua the disputed lands. By the order passed by and on behalf of the respondent on 16th January 1992, such exemption came to be granted on certain terms and conditions. Its copy is at Annexure-A to this petition. One of the conditions attached to the grant of exemption was that the sale document for the lands in question should be got executed within nine months from the date of the order. It appears that the petitioners could not get the sale documents executed on account of certain reasons. It appears that they were granted extension of the time-limit in that regard. It appears that they could not comply with the aforesaid condition within the extended time-limit as well. Thereupon, a show cause notice came to be issued on 7th January 1994 calling upon the petitioners to show cause why the exemption granted to the disputed lands should not be cancelled.

Thereafter, by the order passed by and on behalf of the respondent on 11th January 1996, such exemption came to be cancelled. Its copy is at Annexure-E to this petition. The petitioners have thereupon approached this court by means of this petition under Article 226 of the constitution of India for questioning the correctness of the order at Annexure-E to this petition.

5. The exemption granted by the order at Annexure-A to the petition is cancelled by the impugned order at Annexure-E to this petition mainly on the basis of the ruling of the Supreme Court in the case of S. VASUDEVA v. STATE OF KARNATAKA reported in JUDGMENT TODAY 1993 (2) Supreme Court at page 465. Therein the Apex Court had ruled that the State Government had no power to grant exemption under section 20 (1) of the Act for selling the exempted land to some other person. The aforesaid

binding ruling of the Supreme Court has recently been overruled by the ruling of the Supreme Court in the case of T.R.THANDUR v. UNION OF INDIA reported in JUDGMENT TODAY 196 (4) Supreme Court at Page 14. In that view of the matter, the reason given for cancellation of the exemption on the basis of the overruled ruling cannot be sustained in law.

6. It is true that the sale document could not be got executed by and on behalf of the petitioners within the stipulated time-limit even after it came to be extended. As transpiring from paragraph 4 of the impugned order at Annexure-E to this petition, the petitioners could not give any explanation why they could not get the sale deed executed. It cannot be gainsaid that the condition for getting a sale deed executed within the stipulated time-limit would be in the nature of a directory condition. It is possible that such condition cannot and may not be complied with for diverse reasons like pending litigation for specific performance between the parties or a pending litigation between the vendor and a third party wherein the court might have enjoined the vendor to transfer the land in question in favour of any third party. The time-limit in that regard could and might be extended by or on behalf of the respondent if it is satisfied about the genuineness of the request for extension.

7. Learned counsel Kum. Shah for the petitioners states that the petitioners would get the sale deed executed latest within six months from today. In that view of the matter, it would be desirable to grant time to the petitioners till 31st October 1996 for execution of the sale deed in question. It would be open to the respondent to keep the matter pending till that date. If the petitioners are not able to get the sale deed executed with respect to the disputed lands by 31st October 1996, it would be open to the respondent to cancel the exemption granted by the order at Annexure-A to this petition.

8. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure-E to this petition cannot be sustained in law. It deserves to be quashed and set aside. The matter deserves to be remanded to the respondent for restoration of the proceeding to file and for its fresh decision according to law in the light of this judgment of mine. If the sale deed is got executed by 31st October 1996, the proceeding for cancellation of the exemption may be dropped. If not, the order for cancellation of exemption

may be passed.

9. In the result, this petition is accepted. The order passed by and on behalf of the respondent on 11th January 1996 at Annexure-E to this petition is quashed and set aside. The matter is remanded to the respondent for restoration of the proceeding to file and for its fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.